

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**In Re:**

**Bky. Case No. 04-32867-GFK  
Chapter 7**

**Jesse John Jutz,**

**Debtor.**

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**NOTICE OF HEARING AND  
OBJECTION TO CLAIMED EXEMPT PROPERTY**

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TO: Debtor; Debtor's attorney; the United States Trustee and other parties in interest.

1. First Federal Bank, fsb ("First Federal"), by its undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this objection at 3:00 p.m. on Monday, August 30, 2004, in Courtroom No. 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota before the Honorable Gregory F. Kishel, or as soon thereafter as counsel may be heard.

3. Any objection to the relief requested herein must be filed and delivered not later than Wednesday, August 25, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than Thursday, August 19, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed.R.Bankr.P. 5005, Local Rule 1070-1, and applicable rules. This is a core proceeding. The petition commencing this Chapter 7 case was filed May 11, 2004, and the case

is now pending in this Court

5. This motion is filed pursuant to Bankruptcy Rule 4003(b) and Local Rule 4003-1 and 9013 et seq. and First Federal objects to the Debtor's claim that the following property is exempt under the applicable exemption statute:

- a. Accounts Receivable: 1827 Bu. Delivered to elevator, but debtor not yet paid; worth approximately \$9.90/bu. (\$18,087.30)

Minn. Stat § 550.37 Subd 13

- b. 83 White 4-225 Tractor

Minn. Stat. § 550.37(5)

6. First Federal objects to the exemptions listed above for the following reasons :

- a. First Federal has a valid and perfected security interest on the beans claimed as exempt, and therefore has a valid and perfected security interest in the proceeds. First Federal objects to the claimed exemption to the extent it asserts an ownership interest in these proceeds.
- b. First Federal has a valid and perfected security interest on the tractor claimed as exempt. First Federal objects to the claimed exemption to the extent it asserts an ownership interest in the tractor or any proceeds resulting therefrom.

WHEREFORE, Trustee respectfully moves the Court for an order sustaining the Trustee's motion to Debtor's claimed exemption listed herein and for such other relief as may be just and equitable.

Dated: July 29, 2004

MACKALL, CROUNSE & MOORE

By /e/Andrew P. Moratzka  
Andrew P. Moratzka (Atty No. 0322131)  
Attorneys for First Federal FSB  
1400 AT&T Tower  
Minneapolis, Minnesota 55402  
(612) 305-1400

VERIFICATION

I, Dale Orthoff, of First Federal FSB, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on: 7/29/04

Signed: Dale O. Orthoff

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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**In Re:**

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**MEMORANDUM IN SUPPORT  
OF TRUSTEE'S MOTION**

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**FACTS**

On April 2, 2004, First Federal Bank, fsb (“First Federal”) filed a summons and complaint in Sibley County District Court, Court File No. C2-04-73 (the “Action”), against Jutz Farms, Inc., James Jutz, Darlene Jutz, Jesse Jutz, and Johanna Jutz (collectively, “Defendants”), claiming that Defendants were in default on their notes and guarantees, had converted First Federal’s Collateral, and had fraudulently transferred assets. First Federal therefore requested judicial foreclosure and that a constructive trust be placed on Defendants’ assets with priority over any claimed exemptions. First Federal also filed a notice of lis pendens in the Action. First Federal has not proceeded any further with respect to the Action since the filing of Debtors’ bankruptcy petition. However, First Federal will seek relief from the automatic stay to continue this action in the very near future.

According to the Schedules Debtor claims that the following property is exempt (the “Exemption”) under the applicable exemption statute:

This motion is filed pursuant to Bankruptcy Rule 4003(b) and Local Rule 4003-1 and 9013 et seq. and First Federal FSB (“First Federal”) objects to the Debtor's claim that the following property is exempt under the applicable exemption statute:

- a. Accounts Receivable: 1827 Bu. Delivered to elevator, but debtor not yet paid; worth approximately \$9.90/bu. (\$18,087.30)

Minn. Stat § 550.37 Subd 13

- b. 83 White 4-225 Tractor

Minn. Stat. § 550.37(5)

### ARGUMENT

Debtor claims crop proceeds as exempt. Jutz Farms, Inc, a Minnesota Corporation (“Jutz Farms”), granted First Federal a security interest in, among other things, accounts, inventory, equipment, chattel paper and other rights to payment, and crops. Based on the security agreement granting this interest, it appears as though Debtor is Secretary of Jutz Farms. Debtor does not own the crops unless he has transferred the assets of Jutz Farms to himself, which would be subject to avoidance. Furthermore, Debtor could not deny First Federal’s valid security interest in the crops. As such, Debtor has no basis for claiming an exemption in the proceeds from the crops. *See Georgens v. Federal Deposit Insurance Coporation*, 406 N.W.2d 95, 99 (Minn.Ct.App. 1987) (holding that wife was not entitled to exemption under MINN. STAT. § 550.37 subd. 5 because bank had valid security interest). Therefore First Federal objects to the claimed exemption.

Debtor also claims a tractor as exempt. According to an email from Debtor’s attorney, the tractor, an 83 White 4-225 Tractor (the “Tractor”), burned up while in use. The email further asserts that although the value of the Tractor was only about \$4725, Debtor received insurance proceeds sufficient to pay for the alleged value and purchase money security interest, as well as an additional \$13,164.50. This money was then combined with some of the above allegedly exempt crop proceeds to purchase a new tractor. The claimed exemption and subsequent email

present many problems. First, the scheduled value of the tractor is \$9,500. Second, and as stated above, First Federal had a security interest in equipment of Jutz Farms. To the extent there was equity in the Tractor, any insurance proceeds belong to First Federal. Third, the crop proceeds are not exempt and can therefore not be used to purchase new property. To the extent they were used for that purpose, First Federal has an interest in the new tractor.

#### CONCLUSION

For all the reasons set forth herein, First Federal is entitled to an denying the above exemptions.

Dated: July 29, 2004

Respectfully submitted,

MACKALL, CROUNSE & MOORE

By /e/Andrew P. Moratzka  
Andrew P. Moratzka (Atty No. 0322131)  
Attorneys for First Federal FSB  
1400 AT&T Tower  
Minneapolis, Minnesota 55402  
(612) 305-1400

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

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Chapter 7

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Debtor.

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Amy J. Ditty, employed by Mackall, Crounse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Objection to Claimed Exempt Property, Memorandum in Support of Objection, and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

(Trustee)  
Paul W. Bucher  
P O Box 549  
Rochester, MN 55903-0549

(Debtor)  
Jesse John Jutz  
64640 300<sup>th</sup> Street  
Gibbon, MN 55335

(Attorney for Debtor)  
Kurt M. Anderson  
P O Box 2434  
Minneapolis, MN 55402-0434

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: July 29, 2004

By /e/ Amy J. Ditty

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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**In Re:**

**Bky. Case No. 04-32867-GFK  
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**Debtor.**

**ORDER**

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The above-entitled matter came before the Court for hearing on August 30, 2004, on the motion of First Federal FSB, ("First Federal), objecting to the exemption claim of the Debtor. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds grounds for sustaining First Federal's objection.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Accounts Receivable, under Minn. Stat § 550.37 Subd 13 and an 83 White 4-225 Tractor, under Minn. Stat. § 550.37(5) are not exempt.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Gregory F. Kishel  
United States Bankruptcy Judge